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OFFICE OF PETITIONS

In re Application of
Enzerink, et al.
Application No. 09/461,829
Filed: December 15, 1999
Attorney Docket No. DEP0371

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 14, 2005 (certificate of mailing date September 12, 2005), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed February 24, 2005, which set a shortened statutory period for reply of three (3) months. No proper extensions of time under the provisions of 37 CFR 1.136(a) being obtained and no timely reply being received, this application became abandoned on May 25, 2005. A Notice of Abandonment was mailed on August 30, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). The instant petition lacks item (1).

With respect to (1), petitioners submitted an RCE with required fee on September 14, 2005 (certificate of mailing date September 12, 2005) as the reply. Unfortunately, petitioners did not file a submission with the RCE. A "submission" as used in 37 CFR 1.114 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. See 37 CFR 1.114(c). The petition will not be granted until a proper submission is filed.

The statement of unintentional delay was not signed by a person who would have been in a position of knowing that the delay in filing a timely response was unintentional. In the event that practitioner has no knowledge that the delay was in fact unintentional, practitioner should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If practitioner discovers that the delay was intentional, practitioner must so notify the Office.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Since the \$1020.00 three month extension of time fee submitted with the present petition was filed subsequent to the six-month statutory period for reply, this fee is unnecessary and will be credited to petitioners' deposit account.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
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By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



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For Patent Examination Policy